to confusion in the administration of the law in Malaysia.

I ought perhaps to add that the provisions of sub-paragraphs (b), (c) and (d) of section 22(1) of the Courts of Judicature Act, 1964, were not relevant to the facts of this case. But such special provisions do serve to reinforce me in the view that I have taken in this matter.

Dato' Marshall also raised matters upon which he objected to the form of the charge, namely that it was bad because it disclosed not one conspiracy committed in Sarawak but several conspiracies, some of which, if not all, were committed in the State of Brunei.

Suffice it to say that as I see the charge and the evidence as outlined by Mr. Millar I consider that the conspiracy complained of is one act; an overall conspiracy of which any separate agreement between individuals would but constitute a part of the whole. Further and on the footing that part of that conspiracy took place in Sarawak I consider that I have jurisdiction to try the case.

Order accordingly.

GOVINDA MUDALIAR SONS v. GOVINDASAMY

[A.C.J. (Gill J.) February 2, 1967]

[K.L. — Civil Appeal No. 24 of 1966]

Landlord and Tenant — Premises required by landlord for rebuilding purposes — Intention to demolish — Public interest — Certificate of Rent Assessment Board — Conditions in — Appeal on point of law — Control of Rent Ordinance, 1956, ss. 11(1) and 12(1)(m).

This was an appeal by the tenant against the decision of the Rent Assessment Board granting the respondent landlord a certificate under section 12(1)(m) of the Control of Rent Ordinance to the effect that the board was satisfied that he, the landlord, intended to demolish the premises in question for purposes of rebuilding and that in its opinion it was in the public interest that he should be permitted to do so. The certificate was granted subject to two conditions: (1) the respondent obtain re-approval of the site and building plans, (2) the appellant be allowed to occupy the premises for one year from the date of the certificate.

The respondent gave evidence before the board that he intended to rebuild. He bought the premises in 1945 and in 1955 the building developed several cracks when the municipality laid a sewer. He made up his mind to demolish the building and rebuild, the new building to be set back 20 feet from the existing street line and he agreed to surrender 20 feet to the municipality for purposes of road widening. He had site and building plans prepared which were approved by the municipality. He admitted that in 1955 he had an intention to sell the premises in question but he had no such intention since 1958. He denied that it was not his intention genuinely to pull down the premises and rebuild.

Held: (1) in view of the various steps which the respondent had taken, it could not be said that he did no more than entertain the idea of demolishing the old building and putting up a new one. There was nothing tentative or indefinite about his intention and the board did all they could to protect the appellant by imposing a condition as regard re-approval of the site and building plans;

(2) there was nothing on the face of what the board had said in their certificate or in their grounds of judgment to show that they took an erroneous view of the law. There was sufficient evidence to support their decision.

Cases referred to:—

(1) *Bracegirdle* v. *Oxley* [1947] 1 K.B. 349, 358.

(2) *Tay Yew Heng* v. *Lee Thean Lai* [1959] M.L.J. 78, 79.

(3) *Gurcharan Singh* v. *Rochi Silk Store* [1959] M.L.J. 229, 231.

(4) *Edwards* v. *Bairstow* [1956] A.C. 14.

(5) *Cunliffe* v. *Goodman* [1950] 2 K.B. 237.

CIVIL APPEAL.

Ng Ek Teong (*Padmanabhan* with him) for the appellant.

R. R. Chelliah for the respondent.

Gill J.: This was an appeal by the tenant of premises No. 28, Batu Road, Kuala Lumpur against the decision of the Rent Assessment Board, Kuala Lumpur granting the respondent as the owner of the premises a certificate under section 12(1)(m) of the Control of Rent Ordinance, 1956 to the effect that the board was satisfied that he intended to demolish the premises in question for the purpose of rebuilding and that in its opinion it was in the public interest that he should be permitted to do so. The certificate was granted on 28th October, 1961 subject to the conditions (1) that the respondent shall obtain re-approval of the site and building plans and (2) that the appellant should be allowed to occupy the premises for one year from 28th October, 1961.

Under the Control of Rent Ordinance the only right of appeal against a decision of a Rent Assessment Board is given by section 11(1) which provides that "an appeal shall lie on a point of law from any decision of the board." In granting the certificate the board made a finding, firstly, that the owner intended to demolish and rebuild, and secondly, that it was in the public interest that he should be permitted to do so. Both were findings of fact. A point of law on such findings of fact can arise only if there is no evidence before the board on which they can arrive at such findings or if such findings are inconsistent with the evidence. As was stated by Denning J. (as he then was) in the case of *Bracegirdle* v. *Oxley*,(1) "The court will only interfere if the conclusion cannot reasonably be drawn from the primary facts. . . ."

How a point of law may be involved in findings of fact was considered by Barakbah J. (as he then was) in *Tay Yew Heng* v. *Lee Thean Lai* (2) and by Thomson C.J. (as he then was)

in the Court of Appeal in the case of *Gurcharan Singh* v. *Rochi Silk Store.*[3] Their Lordships cited with approval the following passage from the speech of Lord Radcliffe in the House of Lords in the case of *Edwards* v. *Bairstow* at p. 36: [4]

"When the case comes before the court it is its duty to examine the determination having regard to its knowledge of the relevant law. If the case contains anything *ex facie* which is bad law and which bears upon the determination, it is, obviously, erroneous in point of law. But, without any such misconception appearing *ex facie*, it may be that the facts found are such that no person acting judicially and properly instructed as to the relevant law could have come to the determination under appeal. In those circumstances, too, the court must intervene. It has no option but to assume that there has been some misconception of the law and that this has been responsible for the determination. So there, too, there has been error in point of law. I do not think that it much matters whether this state of affairs is described as one in which there is no evidence to support the determination or as one in which the evidence is inconsistent with and contradictory of the determination, or as one in which the true and only reasonable conclusion contradicts the determination. Rightly understood, each phrase propounds the same test."

In the *Gurcharan Singh* case Thomson C.J. said that "if the appellant wished to make out that the board had erred in law he had to make out either that there was no evidence on which a tribunal directing itself correctly as to the law could have arrived at the conclusion at which it did arrive or that as a matter of inference the evidence on which the tribunal acted should not have led to that conclusion."

In the present case the respondent gave evidence before the board that he intended to rebuild. He said that he bought the premises in 1945. In 1955 the building developed several cracks when the Municipality laid a sewer. He therefore made up his mind to demolish the building and rebuild. The new building was to be set back 20 feet from the existing street line and he agreed to surrender 20 feet to the Municipality for the purpose of widening Batu Road. He had site plans and building plans prepared which were approved by the Municipality on 10th February, 1960 and 11th April, 1960 respectively. He had an intention to sell the premises in 1955 for $85,000, but he has had no such intention since 1958. He denied under cross-examination that it was not his intention genuinely to pull down the premises and rebuild.

It was argued on behalf of the appellant that an intention to rebuild could not co-exist with an intention to sell. I found no substance in that argument because by 1958 the respondent had given up his intention to sell. It was further contended that there was no certainty that the plans would be re-approved. This is hardly something about which the appellant could be heard to complain, because if the plans are not re-approved, the respondent cannot take ejectment proceedings in court for which a fulfilment of the condition imposed by the board in its certificate is a condition precedent. That condition, surely, is in the nature of a protection for the appellant.

In my opinion there was overwhelming evidence before the board that the respondent intended to rebuild. In *Cunliffe* v. *Goodman* [5] Asquith L.J. said:

"The question to be answered is whether the defendant (on whom the onus lies) has proved that the plaintiff . . . 'intended' to pull down the premises on this site. This question is in my view one of fact. If the plaintiff did no more than entertain the idea of this demolition, if she got no further than to contemplate it as a (perhaps attractive) possibility, then one would have to say (and it matters not which way it is put) either that there was no evidence of a positive 'intention' or that the word 'intention' was incapable as a matter of construction of applying to anything so tentative, and so indefinite. An 'intention' to my mind connotes a state of affairs which the party 'intending' . . . does more than merely contemplate: it connotes a state of affairs which, on the contrary, he decides, so far as in him lies, to bring about, and which, in point of possibility, he has a reasonable prospect of being able to bring about, by his own act of volition."

In view of the various steps which the respondent had taken, I do not see how it can be argued that he did no more than entertain the idea of demolishing the old building and putting up a new one. There was nothing tentative or indefinite about his intention and the board did all they could to protect the appellant by imposing a condition as regards re-approval of the site and building plans.

As regards public interest, the board had before it the evidence of Mr. Eric Taylor, the municipal architect, that it was desirable that the whole building should be pulled down and re-placed by a newer, larger and more modern building. He also expressed the opinion that it would be in the public interest to widen Batu Road which was the most heavily trafficked road in central Kuala Lumpur.

There is nothing on the face of what the board has said in their certificate or in their grounds of judgment to show that they took an erroneous view of the law. I do not see how it can be said that there was no evidence to support their decision, or that the evidence was inconsistent with their decision or that the only reasonable conclusion from the evidence contradicted their decision. I therefore dismissed the appeal with costs.

Appeal dismissed.

Solicitors: *Braddell & Ramani; R. R. Chelliah Bros.*